



D2

U.S. Department of Justice

Immigration and Naturalization Service

identifying data created to
prevent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-01-022-51497 Office: Nebraska Service Center

Date: JAN 10 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director. The director granted a subsequent motion to reopen and affirmed his previous decision. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a municipal court with 252 employees. It seeks to employ the beneficiary as a "programmer--Oracle/UNIX System" for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a) (15) (H) (i) (b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a) (15) (H) (i) (b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i) (1) of the Act, 8 U.S.C. 1184(i) (1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i) (2) of the Act, 8 U.S.C. 1184(i) (2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because according to the petitioner's job description, it appeared that the candidate did not require a baccalaureate degree. The director further found that the proposed duties were not so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is the equivalent of a database administrator and thus requires a baccalaureate degree. Counsel submits an expert opinion in support of her claim.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h) (4) (ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to,

architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Responsible for support of UNIX computer systems and Oracle databases. Must ensure systems, applications and databases are available, responsive, have data integrity, have appropriate disaster recovery provisions, are properly documented, and are constructed using consistent and capable methods. Promoting quality methods, providing cross training, and providing outstanding customer service.

The record contains a letter dated July 10, 2001, from the petitioner's court administrator who states, in part, that:

Your letter indicates that a key consideration in the denial was found in the Job Description. With respect to Information Technology positions and for the position held by [the beneficiary] the court stands by the requirement for a 4-year degree in information technology. However, as the demand in Information Technology demonstrates, it is counter-productive to

publish exclusionary job postings. For example, we invite candidates who are near graduation, to post for our openings in a variety of disciplines. We participate in recruiting events with our local colleges and universities in standard recruiting and in special job training/recruitment opportunities for minority students.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a computer programmer with those of a database administrator. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 168, the Department of Labor (DOL) states, in part, as follows:

Most systems programmers hold a 4-year degree in computer science. Extensive knowledge of a variety of operating systems is essential. This includes being able to configure an operating system to work with different types of hardware and adapting the operating system to best meet the needs of a particular organization. Systems programmers also must be able to work with database systems, such as DB2, Oracle, or Sybase, for example.

At page 182 of its Handbook, the DOL also states, in part, as follows:

For systems analyst, programmer-analyst, as well as database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS).

Here, the petitioner is requiring a bachelor's degree in computer information science or an equivalent thereof. The petitioner's requirement for a degree in this specific specialty is reasonable, given the complex nature of the petitioner's information technology requirements. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.